

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
E Fiber San Juan, LLC)	
)	
Petition for Designation Petition for)	WC Docket No. 09-197
Designation as an Eligible)	
Telecommunications Carrier in Certain)	
Tribal Locations in the State of Utah)	
Pursuant to Section 214(e)(6) of the)	
Communication Act of 1934)	
)	
Petition for Waiver of Commission Rules)	
)	
To: The Commission		

**PETITION OF E FIBER SAN JUAN, LLC FOR ELIGIBLE TELECOMMUNICATIONS
CARRIER DESIGNATION IN CERTAIN TRIBAL LOCATIONS IN THE STATE OF UTAH**

**IN THE ALTERNATIVE, PETITION FOR WAIVER OF COMMISSION RULES IN
CONNECTION WITH RDOF PHASE 1 SUPPORT**

E Fiber San Juan, LLC (“EFSJ” or “Petitioner”), pursuant to Section 214(e)(6) of the Communications Act of 1934 (“Act”)¹ and Sections 54.101 *et. seq.* of the rules of the Federal Communications Commission (“Commission” or “FCC”),² respectfully requests designation as a High-Cost and Low-Income Eligible Telecommunications Carrier (“ETC”) in federally-recognized Tribal lands in the State of Utah, as identified on Exhibit I (the “Tribal Locations”). EFSJ has been awarded Rural Digital Opportunity Fund (“RDOF”) Phase I support as a winner in the Commission’s RDOF Phase I auction (“Auction 904”) for these tribal locations.³ In the alternative, EFSJ proposes to withdraw

¹ 47 U.S. Code § 214(e)(6).

² 47 CFR §§ 54.101 *et seq.*

³ EFSJ recognizes its obligation to obtain ETC designation status within 180 days of the announcement by the FCC that Petitioner was a winning bidder in the RDOF Phase I auction, and filed a petition for waiver of that deadline on June 2, 2021. See Petition for Waiver of 47 CFR 54.804(b)(5), AU Docket

its request for ETC designation if the Commission removes these Tribal Locations from its provisional RDOF award and waives certain rules in connection with RDOF Phase I support.

EFSJ initially sought ETC designation by the Public Service Commission of Utah (“PSC”) for all 1,174 total locations EFSJ was provisionally awarded.⁴ EFSJ requests ETC designation by the FCC because the Ute Mountain Ute Tribe (the “Tribe”) opposed designation of EFSJ as an ETC over tribal lands and argued that the Utah PSC lacked jurisdiction to grant ETC designation to EFSJ for the 89 locations on the Tribal Locations. In response to the Tribe’s Opposition and in an effort to expeditiously proceed with ETC designation over the majority of the locations provisionally awarded RDOF support, on July 12, 2021, EFSJ amended its application before the Utah PSC to eliminate the Tribal Locations (“Amended Petition”), and proceeded with obtaining ETC status from the Utah PSC over the non-tribal areas. EFSJ indicated in its Amended Petition that it would seek designation of ETC status for the Tribal Locations from the Commission. The Utah PSC granted EFSJ’s Amended Petition on July 22, 2021 (Utah PSC Order attached as **Exhibit 2**).

On September 10, 2021, EFSJ filed a Petition for Declaratory Ruling, or, in the Alternative, Petition for Designation as an Eligible Telecommunications Carrier in the State of Utah for the Purpose of Receiving Rural Digital Opportunity Fund and Lifeline Support in Tribal Areas. On September 23, 2021, the Utah PSC issued an Order declining to exercise jurisdiction to designate EFSJ as an ETC for Tribal Lands.⁵

EFSJ now seeks designation as an ETC from the FCC with respect to the federally recognized Tribal Locations included in EFSJ’s RDOF award in the State of Utah. In the alternative, EFSJ will

No. 20-34, WC Docket No. 19.126.

⁴ The RDOF award was to Emery Telephone. Emery Telephone divided the provisions award to E Fiber Moab, LLC (428 locations); and EFSJ (1,174 locations). E Fiber Moab, LLC and EFSJ submitted separate long forms to the FCC.

⁵ Order of Utah Public Service Commission, attached as Exhibit 3.

agree to removal of the Tribal Locations from its provisional RDOF award provided the Commission waives its rules regarding requirements, liabilities, and penalties for EFSJ's failure to serve the Tribal Locations. Although, EFSJ is willing to construct facilities to serve the Tribal Locations, the Tribe has been unwilling to grant EFSJ permission to enter the Tribal Locations to construct facilities or to serve the Tribal Locations and opposes ETC designation for EFSJ for Tribal Land.

I. INTRODUCTION AND SUMMARY.

Petitioner, a Utah limited liability company, is a wholly owned subsidiary of Emery Telcom HC, Inc. which is a wholly owned subsidiary of Emery Telephone ("Emery"). Petitioner was formed by Emery on February 13, 2020 under the laws of Utah. EFSJ was formed, in part, to deploy rate of return regulated telephone voice service as a carrier of last resort via a new state-of-the-art, low latency, fiber to the home ("FTTH") network that will also provide high-speed broadband Internet access services in several rural exchanges and/areas of southeastern Utah that currently lack access to such high-speed, broadband services.⁶ As indicated above, EFSJ has received ETC designation for all non-tribal RDOF Award Areas (identified on **Exhibit 2**). EFSJ, by this Petition, seeks ETC designation for the Tribal Locations so it can provide voice and broadband services to the Tribal Locations pursuant to the RDOF award.

Petitioner will deploy broadband and voice services throughout the census block identified

⁶ EFSJ was issued a Certificate of Public Convenience and Necessity ("CPCN") by the Utah PSC on May 10, 2021 to provide rate of return regulated voice service as a carrier of last resort in the local exchanges of LaSal, Monticello, Blanding, Bluff, and Mexican Hat. With regard to the Blanding Exchange, EFSJ's Application for CPCN did not include the community of Tribal White Mesa because EFSJ did not have approval from the Tribe to provide service to the White Mesa Reservation. After the filing of the Application for CPCN, EFSJ was provisionally awarded RDOF funds to build areas in White Mesa so EFSJ initially sought to include the community of White Mesa in its Petition for ETC filed with the Utah PSC. As a result of opposition from the Tribe, EFSJ deleted the community of White Mesa from its State ETC Petition.

on **Exhibit 1**, all of which are located in federally recognized Tribal lands in Utah and in which Petitioner was awarded RDOF support. Petitioner will offer low-latency broadband service with the capability to transmit and receive data by fiber from all or substantially all Internet endpoints, at actual speeds of at least 50 Mbps downstream and 50 Mbps upstream and will offer at least 5GB of monthly usage. Petitioner will provide its customers with voice grade access to the Public Switched Telephone Network (“PSTN”) through its network facilities.

Petitioner seeks ETC designation from the Commission to participate in the High-Cost and Low-Income programs of the federal Universal Service Fund in order to be eligible to receive the RDOF Phase I subsidies it was awarded. Petitioner meets all federal and state statutory and regulatory requirements for ETC designation. Designating Petitioner as an ETC to receive RDOF Phase I support in the census blocks requested will serve the public interest by enabling Petitioner to provide subsidized broadband and voice services to consumers and businesses throughout the Tribal Locations.

II. THE COMMISSION HAS AUTHORITY TO GRANT THE ETC DESIGNATION REQUESTED BY PETITIONER FOR THE TRIBAL LOCATIONS IN UTAH.

Pursuant to Section 214(e)(6) of the Act, the Commission may designate an ETC where the petitioning service provider “is not subject to the jurisdiction of a state commission.”⁷ As indicated above, on September 23, 2021, the Utah PSC issued an Order declining to exercise jurisdiction to designate EFSJ as an ETC for Tribal Lands.

⁷ 47 U.S.C. § 214(e)(6).

III. PETITIONER MEETS THE STATUTORY AND REGULATORY PREREQUISITES TO BE DESIGNATED AS AN ETC.

As demonstrated herein, Petitioner satisfies each of the state and federal statutory and regulatory requirements to be an ETC.

A. Petitioner Will Provide Service as a Common Carrier.

For the customers and locations where RDOF Phase I support has been awarded, Petitioner will provide its services on a common carrier basis. As such, Petitioner certifies that it is a common carrier under Sections 214(e)(1) and 214(e)(6) of the Act.⁸

B. Petitioner Will Offer the Services Supported by the Federal Universal Service Support Mechanisms.

As described below, Petitioner certifies that it will provide the following services that are supported by federal universal service support mechanisms:

1. Voice Grade Access to the Public Switched Network and Eligible Broadband Internet Access Service. EFSJ will provide voice grade access to the PSTN through its network facilities.⁹ EFSJ's broadband internet access service will have the capability to transmit and receive data by fiber from all or substantially all Internet endpoints, including capabilities that are incidental to and enable the operation of the communications services, but excluding dial-up service.¹⁰ EFJS will provide standalone voice service.

2. Minutes of Use for Local Service. As part of the voice grade access to the PSTN, an ETC must provide local usage to its customers. Local usage means an amount of minutes of use of exchange service provided free of charge to end users. EFSJ's voice service will offer unlimited local calling at no additional cost to the customer beyond the monthly service charge.

⁸ See Affidavit of Brock Johansen, attached as Exhibit 4.

⁹ 47 C.F.R. §54-101(a).

¹⁰ 47 C.F.R. §54.101(c).

3. Access to 911 and E911 Emergency Service. EFSJ will provide 911 and E911 access for all its customers to the extent local government in its service area has implemented 911 or E911 systems, as required by 47 C.F.R. §54.101(a). EFSJ will meet this requirement by providing 911 and E911 service from local public service answering points (“PSAPs”).

4. Access to Operator Services. EFSJ will provide customer access to operator services, which is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call.¹¹

5. Access to Directory Assistance. The FCC defines directory assistance as a service that “allows subscribers to retrieve telephone numbers of other subscribers.”¹² EFSJ will provide its customers access to directory assistance.

6. Toll Limitation for Qualifying Low-Income Customers. In its Lifeline Reform Order, the FCC stated that toll limitation would no longer be deemed a supported service.¹³ However, EFSJ has the ability to provide toll limitation services to qualified low-income Lifeline customers.

7. Broadband Services. EFSJ will provide broadband Internet access service that has the capability to transmit data to and receive data from all or substantially all of the Internet endpoints at download speeds in excess of 50Mbps, pursuant to 47 C.F.R. §54.101(a)(2). EFSJ further commits to providing these services consistent with the rules applicable to RDOF award recipients. The rates for broadband service will be reasonably comparable to rates offered in rural Utah and urban areas.

47 U.S.C Section 214(e)(1)(a) requires that a carrier must use its own facilities or a

¹¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392, 19448 ¶ 110 (1996).

¹² *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, Notice of Proposed Rulemaking*, 12FCC Rcd 12817, 12823 n.14 (1998).

¹³ In the Matter of Lifeline and Linkup Reform and Modernization, et al., WC Docket 11-42, Report and Order, FCC 12-11, ¶367 (“Lifeline Reform Order”).

combination of its own facilities and resale of another carrier's facilities in order to provide universal service supported services. EFSJ does NOT seek forbearance from the "own facilities" requirement as EFSJ will utilize its own facilities and its affiliate's facilities to provide its service. This network will be used for all calls to and from EFSJ's customers in Utah.

C. Petitioner Will Advertise the Availability of Supported Services

EFSJ will offer its voice service and broadband Internet access service to both residential and business customers in the Tribal Locations in San Juan County, Utah, and using media of general distribution such as billboard, radio, newspaper, television, direct mail, and Internet advertising, pursuant to 47 USC §214(e) and 47 C.F.R. §54.201(d), will advertise the availability and rates of the voice and broadband Internet access service throughout the ETC service area. EFSJ will also have a website that provides information regarding the voice telephone and broadband Internet access service.

D. Petitioner Will Make Lifeline Service Available to Qualifying Low-Income Consumers.

As required by 47 C.F.R. §54.405, upon designation as an ETC in the Tribal Locations, EFSJ will make available to qualified low-income consumers in the Tribal Locations, a discounted service offering that meets all applicable Lifeline requirements. EFSJ will advertise the Lifeline service by media of general distribution. In addition, EFSJ will comply with the FCC's revised rules regarding information to be included in marketing materials.¹⁴ Specifically, EFSJ's marketing materials will state, in easily understood language, that: (1) it provides a Lifeline service; (2) Lifeline is a government assistance program; (3) the service is non-transferable; (4) only eligible consumers may enroll in the program; (5) documentation is required for enrollment and on-going eligibility; (6) the program is limited to one discount per household; and (7) EFSJ is the provider of the service.¹⁵ Finally, EFSJ will develop an information sheet that explains

¹⁴ See 47 C.F.R. §54.405.

¹⁵ For Lifeline Broadband Internet Access Service, the retail service will be provided by EFSJ's affiliate, Emery Telecommunications & Video, Inc., with the underlying wholesale broadband Internet access

the program qualification process.

E. Service Requirements

Pursuant to 47 CFR §54.202(a)(1)(i), EFSJ will provide telecommunications services to all its customers within the Tribal Locations by utilizing its own facilities and the facilities of its affiliate and certifies that it will comply with the service and performance requirements applicable to the support it receives consistent with 47 CFR §54.202(a)(1)(i).

F. EFSJ Will Remain Functional in an Emergency Situation

Additionally, consistent with FCC rules, EFSJ will have the ability to remain functional in emergency situations. Since EFSJ will provide service using its own or affiliated facilities, EFSJ will provide its customers functionality in emergency situations, including access to back up power, rerouting of traffic around damaged facilities, and managing traffic spikes resulting from emergencies.

G. Commitment to Consumer Protection and Service Quality

Under FCC guidelines, an ETC applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards.¹⁶ EFSJ, in general, commits to satisfying all applicable consumer protection and service quality standards applicable to ETC designated entities.

H. Protections Against Fraud, Waste and Abuse

E Fiber San Juan will take all steps necessary to prevent fraud, waste, and abuse, and will comply with all applicable requirements adopted by the FCC for purposes of preventing fraud, waste, and abuse for Lifeline support, and including the Lifeline enrollment procedures and de-enrollment procedures outlined by the FCC in 47 C.F.R. §54.401 through §54.422.

service provided by EFSJ.

¹⁶ See 47 C.F.R. § 54.202(a)(3). EFSJ notes that the FCC has waived this requirement because the FCC “adopted more specific measures to track deployment, including annual reporting of service to geocoded locations and certification of compliance with benchmark milestones. *FCC ETC Procedure Notice 4-5*.

I. Compliance with Subscriber Eligibility Determination and Certification.

EFSJ will utilize the National Verifier consistent with USAC's policies and procedures. EFSJ's management team has extensive experience with the Lifeline National Verifier and eligibility and certification rules.

J. Compliance with FCC Rules on Deposits, Fees, and Reports.

In compliance with 47 C.F.R. Section 401(c), EFSJ will not collect a deposit in order to initiate service for its Lifeline service plan. Additionally, in compliance with 47 C.F.R. §54.401(e) EFSJ will not charge Lifeline customer a monthly number-portability charge. EFSJ will comply with the FCC's annual reporting.

K. Petitioner Possesses the Financial and Technical Capability to Provide the Supported Services.

With the financial backing of its parent, Emery, Petitioner possesses the financial and technical capabilities to pay for all start-up expenses (*e.g.*, construction, hardware, operations, *etc.*) to get its fiber optic network built and to begin the provision of voice and broadband services throughout its proposed ETC designation area. Petitioner will be able to obtain the requisite amount of lending under its existing lines of credit, and Petitioner is able to obtain additional financing, if necessary, in addition to the RDOF Phase I support being made available to Petitioner.

L. Grant of this Application Will Serve the Public Interest.

Despite the arguments raised by the Tribe before the Utah PSC, the grant of this Petition will clearly serve the public interest by enabling Petitioner to provide low-latency, high-speed broadband and voice services to residents and businesses located within its proposed ETC designation area, as well as to provide subsidized voice and broadband services to those households that seek and qualify for federal Lifeline benefits. Petitioner's participation will

“encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans,”¹⁷ and will aid the Commission’s objective of ensuring that federal universal service support, including RDOF Phase I support, is used efficiently and effectively. Petitioner has middle mile fiber facilities that connect the Tribal Locations to Salt Lake City, 320 miles away. These facilities are the only fiber facilities in the area. The Petitioner already serves the school and tribal headquarters on the Tribal Reservation with fiber, and is positioned to serve the remaining Tribal Locations in Utah. The Tribe has indicated that it wants access to government funding to address – on its own terms – the longstanding lack of affordable, high-quality broadband on the Reservation in White Mesa. However, it is unlikely that the Tribe can serve the Tribal Locations for less federal support than the Petitioner qualified for under RDOF, and the Tribe currently does not have the expertise or facilities in the area to operate such a network.

M. Anti-Drug Abuse Certification.

Petitioner certifies that no party to this petition is subject to denial of federal benefits, including Commission benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

IV. ALTERNATIVE WAIVER AND OBJECTION

As indicated above, the Tribe objected to EFSJ’s request before the Utah PSC for designation as an ETC in the Tribal Locations. The Tribe argued that the Utah PSC did not have jurisdiction to designate ETC status over the Tribal Locations, and that the Commission is the proper agency to exercise jurisdiction to designate ETC status on Tribal Locations in the State of Utah located within the Ute Mountain Ute Tribal Reservation, as sought in this application for

¹⁷ 47 U.S.C. §1302(a).

ETC designation. However, the Tribe also raised a number of issues with EFSJ's RDOF award and objected to any ETC designation for EFSJ for Tribal Locations. Among the issues raised, the Tribe questioned:

- Whether the FCC or Petitioner adequately consulted with the Tribe in advance of the RDOF award;
- Whether EFSJ can offer service on the Tribal Locations without Tribal consent;
- Whether ETC designation on the Tribal Locations will hinder the Tribe's ability to access the government funding it needs to address – on its own terms – the longstanding lack of affordable, high-quality broadband on the Tribal Locations.

The Tribe argued that denying EFSJ's Petition for ETC status on the Tribal Locations would promote the public interest by upholding the Tribe's sovereign rights over its own land and communications policies, and ensuring prompt access to adequate, equitable broadband services in the Tribal Locations.

EFSJ does not take a position on these questions and believes the arguments present issues for the Commission's consideration. However, the fact remains that EFSJ is the winning bidder of the specified census blocks and is obligated to provide broadband and serve the Tribal Locations in the RDOF award. Further, it appears that the Tribe did not participate in the RDOF auction and did not timely object to such auction. Additionally, as demonstrated herein, EFSJ meets the statutory and regulatory requirements for designation as an ETC in the Tribal Locations.

If, however, the Commission agrees with the arguments raised by the Tribe or is not prepared to respond to these issues at this time, EFSJ is willing to withdraw its Petition for ETC status in the Tribal Locations, as discussed more fully below.

A. Adjustment of Bid Awards and Waiver of RDOF Penalties.

In the event the Commission determines not to designate EFJS in the Tribal Locations as a result of objection by the Tribe, EFSJ is willing to default upon its winning bids located in the Tribal Locations and to withdraw this Petition seeking ETC designation in the Tribal Locations, contingent upon the Commission's waiving all potential default requirements, liabilities, and penalties that would otherwise be imposed on EFSJ as a result of the conditional default.

Specifically, with respect to the census blocks listed in **Exhibit 1**, located in Tribal lands, EFSJ respectfully requests that the Commission waive the provision in Section 1.21004(a) that indicates that a "winning bidder that for any reason is not ... authorized to receive support has defaulted on its bid[.]"¹⁸ and the provision in Section 1.21004(b) that states that "failure of the winning bidder to comply with requirements for becoming authorized to receive support" is treated as a default on its bids.¹⁹ Grant of these waivers would result in EFSJ not being subject to the liabilities the Commission may otherwise impose under Sections 1.21004(c) and 1.21004(d) of its rules, as a consequence of EFSJ's failure to become authorized to receive support from the Commission.²⁰

To this end, EFSJ notes that the FCC recently provided certain authorized winning bidders with the opportunity to default on certain census blocks contained in authorized winning bids, due to the fact that "[c]oncerns [had] nonetheless been raised that certain areas included in the Rural Digital Opportunity Fund auction are already served by one or more service providers that offer 25/3 Mbps broadband service or otherwise raise significant concerns about wasteful spending, such as parking lots

¹⁸ 47 CFR § 1.21004(a).

¹⁹ *Id.*, § 1.21004(b).

²⁰ Section 1.21004(c) provides that a winning bidder that defaults on its bids "is liable for either a default payment or a forfeiture...." Section 1.21004(d) provides that defaulting winning bidders may face additional measures "including ... disqualification from future competitive bidding"

and international airports.”²¹ The FCC’s letter goes on to indicate that the FCC “anticipate[s] looking favorably” on requests for waiver of penalties associated with default of these census blocks, provided authorized bidders are able to demonstrate that “defaulting on these bids will serve the public interest...” EFSJ respectfully submits that its own default in deference to the Tribe’s Opposition meets this requirement.

B. The Waiver Standard is Met.

The Commission has authority to waive a rule “if good cause therefor is shown.”²² Good cause may be found if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.²³ As shown herein, unique and special circumstances are present in this case. In the Tribe’s objection to EFSJ’s Petition for ETC filed with the Utah PSC, the Tribe indicated that designating EFSJ as an ETC in the Tribal Locations will hinder the Tribe’s ability to access the government funding it needs to address – on its own terms – the longstanding lack of affordable, high-quality broadband on the Reservation in White Mesa. When the RDOF Auction began, EFSJ was interested in providing broadband service in the Monticello, Blanding, Bluff and Mexican Hat areas. The RDOF Census Block Group 490379782001 contains 46 census blocks with 377 locations. Of these 377 total locations, 89 are located on the Tribal Locations. Because the FCC’s rules do not permit auction participants to bid below the Census Block Group level, EFSJ was required to commit to serve the 89 Tribal Locations as well as the non-Tribal Locations.

Although the Tribe was eligible to apply for the RDOF Grants on the Tribal Locations, it

²¹ See, RDOF Letter to Applicants, available at <https://www.fcc.gov/auction/904/releases>, “Letters” tab, last visited September 16, 2021.

²² 47 CFR § 1.3.

²³ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *Industrial Broadcasting Co. v. FCC*, 437 F.2d 680 (D.C. Cir. 1970); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

did not. Ultimately, the Commission awarded census block group 490379782001, including the Tribal Locations to EFSJ. At the time of EFSJ's application for the RDOF award, the Tribe, to EFSJ's knowledge, had not applied for any federal funds to deploy its own broadband solution.²⁴ EFSJ also was unaware of the Tribe's position that ETC designation for EFSJ would conflict with the Tribe's sovereignty. Further, although EFSJ has committed to serving the Tribal Locations in census block 490379782001, the Tribe has not indicated it will authorize EFSJ to construct facilities or provide service to the Tribal Locations because the Tribe would like to deploy its own broadband solution.

In light of the Tribal concerns, if the Commission would like to reconsider the inclusion of the Tribal Locations in the EFSJ RDOF award, and allow the Tribe to deploy its own broadband network, EFSJ is willing to abandon the Petition to obtain ETC status for the Tribal Locations and not accept the RDOF Phase I funding it was awarded to deploy a fiber-to-the-premises network for the 89 Tribal Locations, provided the Commission is willing to waive any and all associated requirements, liabilities, and penalties for default. Under these particular circumstances, the Commission should find a compelling public interest basis for the Commission to waive the requirements, liabilities, and penalties that would otherwise be applicable to EFSJ as a winning bidder of Auction 904.

Without waivers from the Commission, EFSJ would be liable for penalties under 47 C.F.R. §§1.21004(c) and (d) if EFSJ were to default with respect to its RDOF obligations. Therefore, if the Commission is not inclined to award EFSJ's Petition for ETC in the Tribal

²⁴ Prior to EFSJ seeking a certificate of public convenience and necessity from the Utah PSC (application filed in April of 2020), the Tribe had suggested to EFSJ that it would be seeking a Community Connect Grant through USDA/RUS to assist it with a broadband solution on the White Mesa Reservation. As a result, EFSJ did not seek authority to provide voice service on the White Mesa Reservation. The Tribe either did not seek, or was not awarded a Community Connect Grant for the White Mesa Reservation.

Locations, EFSJ respectfully requests that the Commission waive the provision in Section 1.21004(a) that indicates that a “winning bidder that for any reason is not . . . authorized to receive support has defaulted on its bid.” Additionally, EFSJ specifically requests that the Commission waive Section 1.21004(b) that states that “failure of the winning bidder to comply with the requirements for becoming authorized to receive support” is treated as a default. By granting a waiver of these provisions, EFSJ would avoid being subjected to the liabilities the Commission can impose under Section 1.21004(c) and (d).

If the Commission agrees that the sovereignty issues raised by the Tribe warrant allowing the Tribe to pursue their own efforts to obtain federal funding to deploy their own facilities, EFSJ believes that the public interest would be served by waiving the Commission’s rules to allow EFSJ to avoid liability for not serving the 89 Tribal Locations.

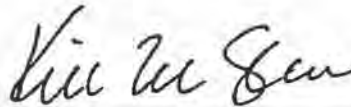
C. Objection to Overbuilding Existing Facilities and Infrastructure.

While EFSJ is willing to withdraw its Petition for ETC Status in the Tribal Locations provided the Commission waives all potential default requirements, liabilities, and penalties, EFSJ objects to any federal funding being used and/or approved for use to overbuild existing middle mile broadband facilities and infrastructure already existing on or surrounding the Tribal Locations. Funding Tribal construction of facilities and infrastructure which would duplicate existing broadband infrastructure and/or facilities would not promote the efficient and effective use of federal resources, and therefore is not in the public interest. As a result, any federal funding sought by, or obtained by the Tribe should not be available to overbuild existing middle mile broadband facilities and infrastructure already existing on or surrounding the Tribal Locations. EFSJ will strenuously object to such use.

V. CONCLUSION

For all of the foregoing reasons, Petitioner respectfully requests that the Commission designated it as a High-Cost and Low-Income ETC on the Tribal Locations in the State of Utah located within the Ute Mountain Ute Reservation, where requested, so that Petitioner will be eligible to receive the RDOF Phase I support it has been awarded in Auction 904. In the alternative, if the Commission will waive all potential default requirements, liabilities, and penalties, EFJS will withdraw its Petition for ETC in the Tribal Locations. However, in such instance, EFSJ objects to any federal funding being used and/or approved for use to overbuild existing middle mile broadband facilities and infrastructure already existing on or surrounding the Tribal Locations.

Respectfully submitted,



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Counsel for E Fiber San Juan, LLC

Dated: September 29, 2021

EXHIBIT 1

**LIST OF CENSUS BLOCKS LOCATED IN THE
UTE MOUNTAIN UTE TRIBAL RESERVATION
IN WHICH PETITIONER SEEKS
DESIGNATION AS A HIGH COST AND LOW-
INCOME (LIFELINE) ELIGIBLE
TELECOMMUNICATIONS CARRIER**

<u>auction_id</u>	<u>bidder</u>	<u>Assigned Company</u>	<u>FRN Assigned Company</u>	<u>FRN Applicant</u>	<u>block_id</u>	<u>item</u>	<u>state</u>	<u>county</u>	<u>census_id</u>	
904	Emery Telephone dba Emery Telcom	E Fiber San Juan, LLC	0030298442	1607340	490379782001555	UT-037-9782001	UT	San Juan	490379782001	White Mesa - Ute Mountain Ute Reservation
904	Emery Telephone dba Emery Telcom	E Fiber San Juan, LLC	0030298442	1607340	490379782001556	UT-037-9782001	UT	San Juan	490379782001	White Mesa - Ute Mountain Ute Reservation
904	Emery Telephone dba Emery Telcom	E Fiber San Juan, LLC	0030298442	1607340	490379782001559	UT-037-9782001	UT	San Juan	490379782001	White Mesa - Ute Mountain Ute Reservation
904	Emery Telephone dba Emery Telcom	E Fiber San Juan, LLC	0030298442	1607340	490379782001615	UT-037-9782001	UT	San Juan	490379782001	White Mesa - Ute Mountain Ute Reservation
904	Emery Telephone dba Emery Telcom	E Fiber San Juan, LLC	0030298442	1607340	490379782001618	UT-037-9782001	UT	San Juan	490379782001	White Mesa - Ute Mountain Ute Reservation
904	Emery Telephone dba Emery Telcom	E Fiber San Juan, LLC	0030298442	1607340	490379782001619	UT-037-9782001	UT	San Juan	490379782001	White Mesa - Ute Mountain Ute Reservation
904	Emery Telephone dba Emery Telcom	E Fiber San Juan, LLC	0030298442	1607340	490379782001620	UT-037-9782001	UT	San Juan	490379782001	White Mesa - Ute Mountain Ute Reservation
904	Emery Telephone dba Emery Telcom	E Fiber San Juan, LLC	0030298442	1607340	490379782001621	UT-037-9782001	UT	San Juan	490379782001	White Mesa - Ute Mountain Ute Reservation
904	Emery Telephone dba Emery Telcom	E Fiber San Juan, LLC	0030298442	1607340	490379782001622	UT-037-9782001	UT	San Juan	490379782001	White Mesa - Ute Mountain Ute Reservation
904	Emery Telephone dba Emery Telcom	E Fiber San Juan, LLC	0030298442	1607340	490379782001624	UT-037-9782001	UT	San Juan	490379782001	White Mesa - Ute Mountain Ute Reservation
904	Emery Telephone dba Emery Telcom	E Fiber San Juan, LLC	0030298442	1607340	490379782001625	UT-037-9782001	UT	San Juan	490379782001	White Mesa - Ute Mountain Ute Reservation

EXHIBIT 2

**ORDER OF THE UTAH PUBLIC SERVICE COMMISSION GRANTING ETC
DESIGNATION IN NON-TRIBAL AREA**

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Petition of E Fiber Moab, LLC for Designation as an Eligible Telecommunications Carrier in the State of Utah for the Purpose of Receiving Rural Digital Opportunity Fund and Lifeline Support	<u>DOCKET NO. 21-2618-01</u>
Petition of E Fiber San Juan, LLC for Designation as an Eligible Telecommunications Carrier in the State of Utah for the Purpose of Receiving Rural Digital Opportunity Fund and Lifeline Support	<u>DOCKET NO. 21-2619-01</u> <u>ORDER</u>

ISSUED: July 22, 2021

INTRODUCTION

On May 28, 2021, E Fiber Moab, LLC and E Fiber San Juan, LLC (collectively “E Fiber”) filed petitions with the Public Service Commission (PSC) for designation as eligible telecommunications carriers (ETC) for certain exchanges within Grand County and San Juan County, Utah (the “ETC Service Areas”)¹ and for the “Local Exchange Areas”² to receive federal Rural Digital Opportunity Fund (“RDOF”) support, as well as federal and state Lifeline support (“Petition”). ETC designation would authorize E Fiber to receive (1) the federal RDOF awards; (2) federal universal service Lifeline support for qualifying Utah customers; (3) federal tribal universal service Lifeline support for qualifying Utah customers; and (4) Utah Lifeline support for qualifying customers.

¹ The ETC Service Areas are identified in the census blocks, and shown on the maps, attached as Exhibits 1 and 2, respectively, to E Fiber’s petitions.

² The Local Exchange Areas are the areas in which E Fiber is authorized to provide telecommunications services under its certificates of public convenience and necessity, as described later in this Order.

BACKGROUND

E Fiber holds certificates of public convenience and necessity (CPCN) authorizing it to provide facilities-based local exchange service as a carrier of last resort in the LaSal, Monticello, Blanding, Bluff, Mexican Hat, Thompson, and Moab exchanges in Grand County and San Juan County, Utah (excluding areas within the Ute Mountain Ute Reservation), consistent with the PSC's Amended Order on Review, Rehearing, or Reconsideration, issued May 12, 2021 ("May 2021 Order").³ The E Fiber entities are wholly-owned subsidiaries of Emery Telcom HC, Inc., a Utah corporation which is wholly owned by Emery Telephone ("Emery"), an incumbent local exchange carrier that has been offering telecommunications services in Utah for decades.

Over the years, Emery has applied for, and been granted, federal funding to deploy broadband services in rural areas in the state of Utah and other surrounding areas. Most recently, on December 7, 2020, the Federal Communications Commission (FCC) awarded Emery funding from the RDOF to provide broadband and voice service in the ETC Service Areas. Emery initially assigned the winning bids to its wholly-owned subsidiary, Emery Telecommunications & Video, Inc. ("ET&V").

ET&V petitioned the PSC for ETC designation ("ET&V Petition")⁴ and filed a Stipulation and Settlement Agreement ("Settlement") between ET&V and the Division of Public Utilities (DPU) with the PSC on April 8, 2021.⁵ The PSC noticed a hearing to consider the

³ See *Application of E Fiber Moab, LLC and E Fiber San Juan, LLC for a Certificate of Public Convenience and Necessity to Provide Facilities-Based Local Exchange Service and be Designated as Carriers of Last Resort in Certain Rural Exchanges*, Docket No. 20-2618-01.

⁴ See *Petition of Emery Telecommunications & Video, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Utah for the Purpose of Receiving Rural Digital Opportunities Fund and Lifeline Support*, Docket No. 21-2272-01.

⁵ *Id.*

Settlement which it subsequently canceled pursuant to a motion seeking to withdraw the ET&V Petition (the “Petition to Withdraw”).⁶ The Petition to Withdraw states that the May 2021 Order granting E Fiber a CPCN obviates the need for ET&V to seek ETC designation. Instead, ET&V indicates that Emery, with the FCC’s approval, had “reassigned the winning RDOF bids in Utah to [E Fiber] [].”⁷

DPU filed its recommendations in the dockets June 28, 2021.⁸ DPU supports the ETC designations but recommends the PSC include similar conditions that have been commonly agreed to by other ETCs. DPU recommends the PSC set the following general conditions:⁹

- E Fiber will maintain a fact sheet that provides customers concise and complete information about the services E Fiber will provide. E Fiber will provide its fact sheet to DPU and the Office of Consumer Services (OCS) before initiating service.
- E Fiber will provide the fact sheet to prospective new customers, each new customer at the time of enrollment, and to existing customers upon request and will make the fact sheet publicly available for download by posting it on its website.
- E Fiber will promptly update the fact sheet anytime it changes its service offerings.

⁶ See Order Granting Motion and Canceling Hearing, Docket No. 21-2272-01, issued May 26, 2021.

⁷ Petition to Withdraw, at 2.

⁸ Docket Nos. 21-2618-01 and 21-2619-01, Comments (“DPU Comments”).

⁹ *Id.*, at 2 (DPU states that these are the same requirements from paragraphs 10 and 11 of the settlement stipulation between ET&V and DPU filed April 8, 2021 in Docket No. 21-2272-01 with the exception of paragraph 10(C) as E Fiber has been granted a CPCN).

- E Fiber will pay all state and local regulatory fees required by applicable laws of the state of Utah, including payments to the Utah Universal Service Support Fund (subject to Utah Admin. Code R746-8-403) and the Utah 911 Fund, and must be able to show verified payment of all such applicable fees.
- E Fiber will adopt any changes to the Lifeline certification and verification process required by the FCC or the PSC.
- E Fiber's service offerings will meet all applicable Lifeline requirements.
- Upon implementing any changes to its Lifeline offerings, E Fiber will timely file a notice with the PSC, DPU, and OCS describing the changes.

DPU also states that the “management, facilities, and operations will remain effectively the same as between the two affiliates [ET&V and E Fiber] with common ownership and management personnel. Therefore, [DPU] is comfortable supporting approval of the petitions for ETC status from E Fiber without additional need for discovery or further review. [DPU] supports the efficient process of an informal review given the circumstances. However, [DPU] recommends that the [PSC] include as a condition of approval the terms that had been agreed to in the ET&V [D]ocket [No. 21-2272-01].”¹⁰ DPU states that “[t]hey are primarily obligations that E Fiber would generally be expected to meet as a regulated telecom in Utah and are commonly agreed to by other ETCs in the state.”¹¹ DPU further states that it “has discussed this

¹⁰ DPU Comments, at 2-3.

¹¹ *Id.*, at 3.

with E Fiber and E Fiber does not object to meeting the same terms as those agreed to by ET&V.”¹²

The Ute Mountain Communications Enterprise (UMCE) also filed comments June 28, 2021, opposing the E Fiber San Juan petition for the purpose of receiving RDOF and lifeline support.¹³ The UMCE contests the PSC’s jurisdiction to designate E Fiber as an ETC in White Mesa.¹⁴ Further, UMCE explains E Fiber does not meet the statutory requirement of receiving Tribal consent for such an ETC designation.¹⁵ UMCE also states that E Fiber does not currently hold a CPCN authorizing it to provide service in White Mesa.¹⁶ UMCE asserts granting E Fiber ETC status in White Mesa would be counter to the public interest.¹⁷

On July 13, 2021, E Fiber filed reply comments, amending its Petition to eliminate the White Mesa RDOF Census Blocks, stating it seeks ETC status only for the remaining, non-tribal RDOF Census Blocks in the local exchange areas approved in the May 2021 Order.¹⁸ E Fiber did not object to DPU’s recommended conditions, and no other parties filed comments.

¹² *Id.*

¹³ Comments of Ute Mountain Communications Enterprise in Opposition to Petition of E Fiber San Juan, LLC for Designation as an Eligible Telecommunications Carrier in the State of Utah for the Purpose of Receiving Rural Digital Opportunity Fund and Lifeline Support (“UMCE Opposition”), at 2.

¹⁴ UMCE Opposition, at 4-5.

¹⁵ *Id.*, at 7-9.

¹⁶ *Id.*, at 4.

¹⁷ *Id.*, at 7.

¹⁸ Reply Comments of E Fiber San Juan, LLC and Amendment to Petition of E Fiber San Juan, LLC for Designation as an Eligible Telecommunications Carrier in the State of Utah for the Purpose of Receiving Rural Digital Opportunity Fund and Lifeline Support (“Reply Comments”), at 3.

FINDINGS, CONCLUSIONS, AND ORDER

DPU recommends the PSC grant the Petition on the condition that E Fiber be subject to the same requirements its affiliate, ET&V, agreed to in the Settlement. Consistent with the Amended Petition, the DPU Comments, and the Settlement, E Fiber asserts that:

1. E Fiber is a provider of eligible broadband internet access and voice grade services.
2. E Fiber seeks ETC designation authorizing E Fiber to obtain RDOF support to provide voice and broadband services to Utah customers in the areas awarded in the RDOF auction, as amended in its Reply Comments (specifically excluding the White Mesa RDOF Census Blocks), as well as in the Local Exchange Areas.
3. E Fiber will comply with all applicable FCC and Utah ETC requirements.
4. E Fiber commits to provide broadband Internet access service that has the capability to transmit data to and receive data from all or substantially all of the Internet endpoints at download speeds in excess of 50 Mbps.
5. E Fiber will also offer unlimited local voice usage, access to emergency services via 911 and E-911, wherever available from local government or public safety organizations, and operator and directory assistance services.
6. E Fiber will provide toll limitation for qualifying low-income customers.
7. E Fiber meets and will continue to meet the requirements for federal ETC designation and will comply with all federal requirements for the services it offers in Utah as an ETC.
8. E Fiber will comply with applicable Utah ETC and Lifeline requirements.
9. E Fiber's proposed RDOF supported services further the statutory goal that services be available and affordable to all citizens of the State of Utah.

In its Reply Comments, E Fiber withdrew the White Mesa RDOF Census Blocks from its Petition, and correspondingly amended its original petition to reflect the removal of the area (“Amended Petition”). Consequently, there is no opposition to the Amended Petition. Based on this, and after consideration of the Amended Petition, the submitted written testimony, the representations in the DPU Comments, E Fiber’s commitments as referenced in its Amended Petition and in this Order, and E Fiber’s Reply Comments, the PSC finds and concludes that approval of the Amended Petition is in the public interest and that it is just and reasonable in result. The PSC therefore grants the Amended Petition, as conditioned, and so long as E Fiber meets its commitments in the Amended Petition and the requirements set forth in this Order.

DATED at Salt Lake City, Utah, July 22, 2021.

/s/ Yvonne R. Hogle
Presiding Officer

Approved and Confirmed July 22, 2021, as the Order of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#319673

DOCKET NOS. 21-2618-01 and 21-2619-01

- 8 -

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the PSC within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC does not grant a request for review or rehearing within 30 days after the filing of the request, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on July 22, 2021, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

Kira M. Slawson (kslawson@blackburn-stoll.com)
Brock Johansen (bjohansen@emerytelcom.com)
E Fiber Moab, LLC

Patricia Schmid (pschmid@agutah.gov)
Justin Jetter (jjetter@agutah.gov)
Robert Moore (rmoore@agutah.gov)
Assistant Utah Attorneys General

Madison Galt (mgalt@utah.gov)
Division of Public Utilities

Alyson Anderson (akanderson@utah.gov)
Bela Vastag (bvastag@utah.gov)
Alex Ware (aware@utah.gov)
(ocs@utah.gov)
Office of Consumer Services

Administrative Assistant

EXHIBIT 3

ORDER OF UTAH PUBLIC SERVICE COMMISSION DECLINING JURISDICTION

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Petition of E Fiber San Juan, LLC for Declaratory Ruling or, in the Alternative, Petition for Designation as an Eligible Telecommunications Carrier on Tribal Locations in the State of Utah for the Purpose of Receiving Rural Digital Opportunity Fund and Lifeline Support	<u>DOCKET NO. 21-2619-02</u> <u>ORDER</u>
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ISSUED: September 23, 2021

On September 10, 2021, E Fiber San Juan, LLC filed with the Public Service Commission (PSC) the Petition of San Juan, LLC for Declaratory Ruling, or, in the Alternative, Petition for Designation as an Eligible Telecommunications Carrier in the State of Utah for the Purpose of Receiving Rural Digital Opportunity Fund and Lifeline Support in Tribal Areas (“Petition”). The Petition seeks a declaratory ruling from the PSC indicating that the PSC will not exercise jurisdiction over eligible telecommunications carrier (ETC) designation for certain areas involving 89 tribal locations (“Tribal Locations”). E Fiber San Juan, LLC desires to seek ETC status for the Tribal Locations from the Federal Communications Commission, rather than from the PSC.

The PSC provided interested persons an opportunity to comment on the Petition in the Notice issued September 13, 2021 in this docket. The Notice provided background that led to the Petition and indicated the PSC’s intent to grant the Petition and decline to exercise jurisdiction unless it received responses by September 17, 2021.

No person responded to the Notice by the September 17, 2021 deadline. Therefore, the PSC grants the Petition and declines to exercise jurisdiction over ETC designation for the Tribal Locations.

DOCKET NO. 21-2619-02

- 2 -

DATED at Salt Lake City, Utah, September 23, 2021.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#320389

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the PSC within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC does not grant a request for review or rehearing within 30 days after the filing of the request, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on September 23, 2021, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

Kira M. Slawson (kslawson@blackburn-stoll.com)
Blackburn & Stoll, LC

Brock Johansen (bjohansen@emerytelcom.com)
E Fiber San Juan, LLC

Patricia Schmid (pschmid@utah.gov)
Justin Jetter (jjetter@utah.gov)
Robert Moore (rmoore@utah.gov)
Assistant Utah Attorneys General

Madison Galt (mgalt@utah.gov)
Division of Public Utilities


Alyson Anderson (akanderson@utah.gov)
Bela Vastag (bvastag@utah.gov)
Alex Ware (aware@utah.gov)
(ocs@utah.gov)
Office of Consumer Services

Administrative Assistant

EXHIBIT 4
AFFIDAVIT OF BROCK JOHANSEN,
CHIEF EXECUTIVE OFFICER OF
E FIBER SAN JUAN, LLC

Brock Johansen, after being duly sworn, states the following:

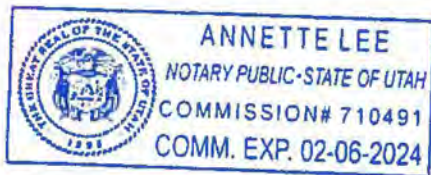
1. I have personal knowledge of the facts and information set forth in this Affidavit and I am competent to testify to these facts if called as a witness.
2. I am the Chief Executive Officer ("CEO") of E Fiber San Juan, LLC ("Petitioner").
3. I have read the Petition to which this Affidavit is attached. I have knowledge of the facts stated in the Petition and those facts are true to the best of my knowledge and my belief.
4. In my capacity as CEO of Petitioner, I certify on behalf of Petitioner that:
 - a. Petitioner is a common carrier under Section 214 (e)(1) and 214(e)(6) of the Communications Act of 1934, as amended (the "Act");
 - b. Petitioner offers or intends to offer all services designated for support by the Federal Communications Commission ("Commission") pursuant to section 254(c) of the Act; in the census blocks described in the Petition;
 - c. Petitioner offers or intends to offer the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services;
 - d. Petitioner will meet all Commission requirements for designation as an ETC under Section 214(e)(1) and (6) of the Act, and all of the Commission's requirements for designation as an ETC;
 - e. Petitioner is eligible to be designated as an ETC within the meaning of Section 214(e) of the Act and is eligible to receive federal universal service support pursuant to Section 254(e) of the Act.
 - f. Petitioner will use the federal high-cost support funds that it receives only to provide, maintain, and upgrade facilities and services for which the support is intended.
 - g. Neither the Petitioner, nor any party to the application, is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.
 - h. Petitioner will comply with the service requirements applicable to the support that it receives;



Brock Johansen
Chief Executive Officer,
E Fiber San Juan, LLC

STATE OF UTAH)
 :SS
COUNTY OF EMERY)

Subscribed and sworn to before me this 28 day of September, 2021.



Annette Lee

Notary Public

Residing

at: Price, Utah

My Commission Expires:

02-06-2024